

IUCCC CHAPTER 7 SMALL LOAN QUESTIONS & ANSWERS

The following Questions and Answers are being disseminated by the Indiana Department of Financial Institutions (DFI) as an “advisory” for licensed entities making small loans. The DFI is authorized to adopt rules under IC 24-4.5-7-414. These guidelines are not being implemented under that section. Instead the answers are based on the DFI’s interpretation of the law, regarding both the actual meaning as well as the intent of the law.

These guidelines have been mailed to all licensees and are available at the DFI website along with a copy of the power point presentation from the meeting on May 11, 2004. We encourage all small loan lenders to review the advisory and corresponding power point presentation. If you have any questions, feel free to contact the DFI.

Question: IC 24-4.5-7-110 has been changed to allow lenders to use the borrower’s gross monthly income received in the 30-day period preceding the borrower’s application. Can the lender count all gross income if the borrower is actually paid 3 times bi-weekly or 5 times weekly during that 30-day period?

Answer: No. This change in the statute was made with the intent of preventing monthly income recipients being refused loans because they had no income in the 28-day period prior to the loan request (under the prior statute). It was also implemented to make the calculation more transparent for the customer, the lender, and the regulator. This is also the reason it was changed from 20% of net income to 15% of gross income. The lender should multiply the borrower’s regular earnings by the number of times they are typically paid in a 30-day period. For example, a person paid weekly will normally be paid 4 times in that period, so the regular earnings would be multiplied by 4 to determine the gross monthly income. For a person paid bi-weekly, it would be multiplied by 2. Actual practices of lenders will be monitored at the time of examination. Attempts to evade and/or circumvent the intent of the statute will be looked upon unfavorably and may result in imposition of penalties outlined by IC 24-4.5.

Question: What is regular gross pay as outlined by IC 24-4.5-7-110?

Answer: Regular gross pay is that documented income the borrower receives on a regular basis from wages, salary, retirement benefits, or social security income.

Question: What must a small loan licensee maintain to substantiate the amount of regular gross income the borrower has earned when determining the loan amount permitted under IC 24-4.5-7-402(1)?

Answer: Ideally, the lender should require the borrower to bring in tangible proof of all income received during the 30-day period prior to the loan application, and lenders are urged to encourage the borrower to bring in this information before a loan is made. This would be a prudent practice to protect the lender from using incorrect information and ensure their compliance with the statute. In those instances where all documentation is not available, the lender should document why the records are not available. The DFI will look at what is in file and attempt to be as fair as possible, but cautions that lack of records should be the exception rather than the rule. The DFI will accept pay stubs issued within 30 days of the loan date provided the lender does not take advantage by continually using an inflated pay record to make higher loans.

Question: The language in **IC 24-4.5-7-201(2)** and **(3)** regarding charges on loans made after July 1, 2004 seems to contain a contradiction in that the exact amount of \$400.00 seems to be both covered and not covered in the same sentence. Is the exact amount of \$400.00 covered or not?

Answer: Yes, it is covered. This is an apparent drafting error. The sentence does cover the \$400.00 before it does not cover it by the omission of the words "or equal to" in making reference to the \$400.00 amount. It is clear that it would be an absurd result to construe the statute in a manner to not include an amount that was obviously meant to be included. The 15% is on the first \$250 of the amount financed. The 13% is on the portion from \$250.01 to \$400. The 10% is on the portion from \$400.01 to \$500. See rate chart example from the meeting of May 11. See also the current rate step-rate structure for loans under **IC 24-4.5-3-508**.

Question: **IC 24-4.5-7-301(3)(b)** requires a lender to have a sign in the lending area printed in not less than one-inch bold print regarding notice to the customer about the nature of small loans. Will the DFI require this sign, with applicable changes, to be in place by July 1, 2004?

Answer: No. Lenders should get this sign in place as soon as possible. However, the DFI will not be critical of someone who does not have this sign in place on July 1, 2004.

Question: May the new customer pamphlet required under **IC 24-4.5-7-301(4)** be given to the customer either as a separate pamphlet or incorporated as part of the loan document?

Answer: Yes, either is acceptable.

Question: Once a borrower has completed the cycle of an initial small loan and five subsequent consecutive small loans outlined by **IC 24-4.5-7-401(2)**, what is the lender required to do?

Answer: There are only two options available to the lender and consumer..

1. The borrower can pay the small loan in full in cash or by having the borrower's check deposited or by an electronic debit as authorized. The borrower shall then wait a minimum of 8 days before entering into another small loan with the same lender, or someone affiliated with that lender.

2. If the amount of the loan cannot be paid in accordance with # 1 above, then the lender and the borrower may enter into a consumer loan agreement, payable in installments, under the provisions of **IC 24-4.5-3-508**. This transaction would be limited to a maximum of 36% Annual Percentage Rate on any loan with an amount financed of \$990 or less (effective 7-1-04). Payable in installments is a defined term (**IC 24-4.5-1-301(13)**) and requires more than four installments. This option must be entered into between the lender and the borrower within 7 days of the due date of the fifth consecutive small loan.

Each of the above options was placed into the law to give the borrower an opportunity to become less dependent on short-term, high cost credit, resulting in a debt treadmill. Actual practices of lenders will be monitored at the time of examination. Attempts to evade and/or circumvent the statute will be looked upon unfavorably and may result in imposition of penalties outlined by **IC 24-4.5**.

Question: Can a customer pay off an existing installment loan made under **IC 24-4.5-7-401(2)** and **IC 24-4.5-3-508** with a new small loan from the same lender, or someone affiliated with the lender?

Answer: No. This practice would only serve to circumvent the reason the law was changed.

Question: When will the 7-day "cooling-off period" required by **IC 24-4.5-7-401(2)** begin to be calculated if the customer pays off their account in full prior to or after the maturity date of the loan?

Answer: The DFI will expect lenders to use either the due date/maturity date of the loan or the date the loan is paid in full, **whichever is later**. The DFI believes that this will ensure compliance with the intent of the legislature.

Question: IC 24-4.5-7-401(2) changes the statute effective July 1, 2004 regarding the number of consecutive small loans before there is a cooling-off period. How should a lender calculate this with existing customers?

Answer: The new law will affect only those loans made on or after July 1, 2004, and not loans made prior to that date. Therefore, counting the maximum number of consecutive small loans will begin with the first loan made on or after that date.

Question: Can lenders use existing small loan forms after July 1, 2004?

Answer: No. Small loan lenders must use new forms reflecting law changes on all loans made on or after July 1, 2004. If the lender wants to make installment loans under IC 24-4.5-7-401(2) and IC 24-4.5-3-508, then they will need a standard installment loan form.

Loan forms that comply can be obtained from any vendor. One source for loan forms is Burrell Printing at 1-800-531-5234 or at [www. BurrellPrinting.com](http://www.BurrellPrinting.com)

Question: Since renewals will not be permitted under changes in the law, what if the borrower wants to reduce the amount of their small loan at the time a new subsequent consecutive small loan is made?

Answer: In these instances, the lender would accept payment in full from the borrower and then make the subsequent loan for a lesser amount if another consecutive small loan is permitted. In addition, the borrower may make payments on the small loan at any time to reduce the amount of the debt as outlined in IC 24-4.5-7-402(3). If a customer does make partial payments, then the lender should have the customer give them a replacement check for the reduced amount and return the customer's prior check. As an alternative, the lender may reduce the final payment and document any "credit" to the borrower's existing loan balance.

Question: IC 24-4.5-7-404(3) refers to a maximum loan amount of \$500 when combining the "face" amounts of the checks written or debits authorized into a single sum. This is when the customer has an existing loan with another lender. Does this mean that although a lender can make one small loan up to \$500 plus applicable finance charges to a qualified borrower (no other outstanding small loan) as outlined in IC 24-4.5-7-104 and 7-402, that if the customer has another small loan outstanding with another lender, then the maximum amount outstanding including the loan amount and finance charge cannot exceed \$500?

Answer: Yes. For example, if the borrower has an active small loan with another lender totaling \$115 (\$100 amount financed and \$15 finance charge), then a lender making the second small loan would be limited to a total loan of \$385 (amount financed plus finance charges).

Question: Does the DFI anticipate endorsing or approving any commercially reasonable method of verifying small loans outlined by IC 24-4.5-7-404(5) in the near future?

Answer: The DFI is not aware of any such service at this time. If and when the DFI finds such a service that would enable lenders to verify all small loans, each licensee will be advised.

Until that time, to comply with the law, the lender should:

- (a) require the borrower to answer all questions on the loan form as required by IC 24-4.5-7-404(3);
- (b) check all locations where the licensee, or an affiliate, makes loans, to ensure the prospective borrower does not already have a small loan. This review does not have to include all locations, only those where it is reasonable to believe the borrower may have a loan.

Question: Did the statutory changes effective July 1, 2004 make any changes to the limitations outlined in **IC 24-4.5-7-406** (default charges) and **IC 24-4.5-7-410** (limitations)?

Answer: No. All of these limitations remain in force and should be reviewed by all small loan lenders.

Question: A comment was made at the meeting on May 11 about lenders notifying the DFI in the event of certain events. Can you clarify?

Answer: Yes. Lenders should review **IC 24-4.5-3-505(3)**. This is available at the DFI website under statutes. This section requires notice of branch changes, changes in officers, etc. Lenders should also review **IC 24-4.5-7-405** regarding other business conducted at licensed locations. Finally, lenders should be aware that additional branch locations would require evidence of increased bonding as outlined in **IC 24-4.5-7-413**.

Question: Can a lender require that a customer give them authorization to debit their checking account through an Automated Clearinghouse (ACH) authorization as part of the standard language in the small loan agreement? See **IC 24-4.5-7-104(b)** and **7-109(3)**.

Answer: No. Under Federal law governing electronic funds transfers, 15 USC 1693, authorization to debit a customer's account must not be a condition to the extension of credit. It must be a voluntary election by the customer.